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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/707,779

01/12/2004

Rachel Heitz

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FITZPATRICK CELLA (AMEX)

30 ROCKEFELLER PLAZA

NEW YORK, NY 10112

EXAMINER

KAZIMI, HANI M

ART UNIT

PAPER NUMBER

3691

MAIL DATE

DELIVERY MODE

10/20/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/707,779	<b>Applicant(s)</b> HEITZ ET AL.	
	<b>Examiner</b> Hani Kazimi	<b>Art Unit</b> 3691	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5-13 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-13 and 15-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This communication is in response to Applicant's amendment filed on July 25, 2008. Claims 1, 2, 5-13 and 15-22 are pending in the application.

#### **Continued Examination Under 37 CFR 1.114**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/25/2008 has been entered.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4-13 and 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine et al (US 5477038) in view of Shimizu et al (US 5898158) in view of Applicant's Admitted Prior Art ("AAPA")(US 20050154670).

Claims 1, 17 and 21-22; Levine teaches a method and a corresponding system for facilitating distribution of a transaction account card through a distributor, the method comprising the steps of: issuing a transaction account card to the distributor (col. 2, lines 31-32); and receiving information from the distributor via local software, wherein said information reports the distribution of said transaction account card, wherein said card is one of a plurality of cards, and wherein said plurality of cards are consigned in groups to the distributor (col. 2, lines 31-57).

Levine does not teach wherein said transaction account card is a credit card or a debit card; receiving information via MICR protocol or preexisting Traveler's Check infrastructure. However, Levine explicitly teaches prepaid cards (abstract). Shimizu teaches the concept of alternatively using a credit card or bank card in place of prepaid card (col. 43, lines 57-61). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Levine's prepaid card to include credit card or debit card as alternatives for the obvious reason of increasing the flexibility of the method.

AAPA discloses that the use of MICR protocol or preexisting Travelers Check infrastructure to receive information from a distributor regarding a sale of Travelers Check is old and well known (see Background of Invention (Para 003-0010)). Since each individual element and its function are shown in the prior art, the difference between the claimed subject matter and the prior art rest not on any individual element or function but in the very combination itself- that is in the substitution of the local software for the MICR protocol or preexisting Traveler's Check infrastructure. Thus, the simple

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substitution of one known element for another for producing a predictable result renders the claim obvious.

Claim 2; Levine teaches the step of activating said distributed transaction account card (abstract).

Claim 5; See claim 1 analysis above. Levine in view of AAPA further teaches the steps of: associating a first number with said transaction account card, wherein said first number is configured to conform to said MICR protocol, wherein said first number comprises, at least in part, a plurality of sequential numbers; and associating a second number with said transaction account card, wherein said second number is a randomized account number (col. 2, lines 47-58).

Claim 6; See claim 1 analysis above. Levine in view of AAPA further teaches wherein a purchase agreement is associated with said card and bears indicia of said first number.

Claim 7; See claim 1 analysis above. Levine in view of AAPA further teaches wherein said indicia of said first number is embodied in a MICR line visible on said purchase agreement form.

Claim 8; See claim 1 analysis above. Levine in view of AAPA further teaches wherein

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said second number is an account number, wherein said distribution comprises a sale of said transaction account, and wherein the distributor is a third party seller.

Claim 9; See claim 1 analysis above. Levine in view of AAPA further teaches the step of processing said information via a pre-established travelers cheque infrastructure.

Claim 10; See claim 1 analysis above. Levine in view of AAPA further teaches the step of paying said third party seller a commission for said sale of said transaction account based on at least a portion of the information received from said third party seller (col. 6, lines 14-20).

Claim 11; See claim 1 analysis above. Levine in view of AAPA further teaches a serial number and an account number, and wherein said activating step further comprises the step of confirming that activation is appropriate by confirming at least one of the following information received from said third party distributor: a purchase location, said serial number and said account number (col. 2, lines 47-58).

Claims 12 and 16; Levine teaches a transaction account distribution device for facilitating the distribution of a card by a distributor, said transaction account distribution device comprising a card, wherein said card is also associated with a first number that is configured for communication in a protocol;

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Levine does not teach MICR protocol or Travelers check infrastructure; and a purchase agreement form configured to bear a MICR line configured to be machine read for conveying said first number to a computer system. However, AAPA discloses that the use of MICR protocol or preexisting Travelers Check infrastructure to receive information from a distributor regarding a sale of Travelers Check is old and well known. In addition AAPA discloses the use PAF in a Travelers check transaction (see Background of Invention). Since each individual element and its function are shown in the prior art, the difference between the claimed subject matter and the prior art rest not on any individual element or function but in the very combination itself- that is in the substitution of the local software for the MICR protocol or preexisting Traveler's Check infrastructure including the use of PAF. Thus, the simple substitution of one known element for another for producing a predictable result renders the claim obvious.

Claims 13 and 18-19; See claim 1 analysis above. Levine teaches wherein said first number is a serialized number (col. 2, lines 48-58).

Claim 12; Levine teaches wherein said card is a pre-paid card (abstract).

Claim 20; Levine teaches wherein the cards are pre-paid cards and wherein each of the pre-paid cards is funded no earlier than the sale of the pre-paid card by the distributor (abstract).

***Response to Arguments***

3. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hani Kazimi whose telephone number is (571) 272-6745. The examiner can normally be reached Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-2 17-9197 (toll-free).

/Hani M. Kazimi/

Primary Examiner, Art Unit 3691